

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of IRENE KELLEY and U.S. POSTAL SERVICE,  
FIVE POINTS POST OFFICE, El Paso, TX

*Docket No. 99-698; Submitted on the Record;  
Issued October 17, 2000*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,  
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established that she sustained a recurrence of disability effective August 29, 1995 that was causally related to her February 5, 1988 employment injury.

The case has been on appeal previously.<sup>1</sup> In a September 26, 1995 decision, the Board noted that appellant was injured on February 5, 1988 when she slipped in the snow and fell, landing on her right knee. The Office of Workers' Compensation Programs accepted that appellant sustained an internal derangement of right knee and a consequential internal derangement of the left knee and issued schedule awards for a 24 percent permanent impairment of the right leg and a 9 percent permanent impairment of the left leg. She returned to light-duty work effective January 26, 1993. The Board found that the Office's decision in regard to the schedule awards was not in posture for decision due to discrepancies in the medical evidence and medical findings that were not explicitly explained by an Office medical adviser. The Board therefore remanded the case for further development. In a November 16, 1995 decision, the Office rejected appellant's claim for an increased schedule award on the grounds that the medical evidence did not establish an increased permanent impairment in either leg. Appellant did not appeal from this decision.

On February 12, 1996 appellant filed a claim for recurrence of disability effective August 29, 1995.<sup>2</sup> In a June 27, 1996 decision, the Office rejected appellant's claim on the grounds that the evidence of record failed to demonstrate a causal relationship between

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<sup>1</sup> Docket No. 94-688 (issued September 26, 1995). The history of the case is contained in the prior decision and is incorporated by reference.

<sup>2</sup> The employing establishment indicated that appellant resigned from the employing establishment on August 24, 1995 after postal inspectors stated in a memorandum that appellant had been observed driving to her home during work hours or that her car was parked in her driveway during work hours on days when she indicated that she had worked eight hours while repairing cluster mailboxes in apartment buildings. The postal inspectors also stated that appellant had claimed excessive mileage for use of her own vehicle on the days in question.

appellant's employment injury and her claimed disability. Appellant requested a hearing before an Office hearing representative, which was conducted on April 27, 1998. In a September 11, 1998 decision, the Office hearing representative found that appellant had not met her burden of proof in establishing that she was disabled from her light-duty position after August 29, 1995 as a result of her accepted conditions. He therefore affirmed the Office's June 27, 1996 decision.

The Board finds that appellant has not met her burden of proof in establishing that she had a recurrence of disability after August 29, 1995 causally related to the effects of her February 5, 1988 employment injury.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>3</sup>

Appellant indicated that when she returned to light duty she was to work four hours in the office on the computer and four hours in the field, repairing cluster mailboxes in apartment buildings. She contended that the employing establishment had changed her job restrictions by requiring her to work seven hours in the field and one hour in the office. The employing establishment did not indicate whether appellant's duties had been changed. However, the medical evidence of record did not establish that appellant had a recurrence of disability causally related to her employment injury.

In a November 14, 1995 report, Dr. Antonio Ghiselli, a Board-certified orthopedic surgeon, diagnosed subluxation of the right patella and chondromalacia of both patellae. He referred appellant for a magnetic resonance imaging (MRI) scan of the right knee. In a December 7, 1995 report, Dr. Scott Blumenfeld, a Board-certified radiologist, reported that the MRI showed no internal derangement of the right knee. He indicated that appellant has a focal area of osteochondritis dissecans or subchondral marrow changes from chondromalacia involving the internal lateral patellar facet. In a December 20, 1995 report, Dr. Ghiselli diagnosed subluxation of the right patella and noted the MRI findings. He stated appellant was suffering due to her knees, was walking with a cane and was limping. He commented that the knees had no hope of recovering in the future. He concluded that appellant was permanently disabled. In a January 31, 1996 report, Dr. Ghiselli again stated that appellant was totally disabled. He reported that appellant had limitations of standing, walking and sitting for 2 hours a day intermittently, lifting or carrying up to 10 pounds for 1 hour a day intermittently, pushing or pulling for 2 hours a day intermittently without the use of the knees, no twisting involving the knees, and no climbing, stooping or kneeling. Dr. Ghiselli commented that appellant was limited in the use of computers and machines due to pain in her hands. He stated that appellant was not able to work unless her job conformed to her work restrictions.

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<sup>3</sup> *George DePasquale*, 39 ECAB 295 (1987); *Terry R. Hedman*, 38 ECAB 222 (1986).

In a March 15, 1996 report, Dr. Ghiselli suggested that appellant would eventually need a total right knee replacement. In subsequent reports, Dr. Ghiselli indicated that appellant continued to complain of right knee pain. In an August 14, 1996 report, Dr. Ghiselli stated that appellant needed arthroscopy of the right knee due to symptoms of internal derangement and subluxating patella of the right knee. He related appellant's injury and the recurrence of disability to the February 5, 1988 employment injury. In an August 16, 1996 office note, Dr. Ghiselli stated that appellant had degenerative changes in the lumbar spine, mild pes planus of both feet with secondary plantar fasciitis, narrowing of the C6-7 disc space due to a whiplash injury in 1987. He reported that, due to osteoarthritis, appellant had pain in the hands, fingers, wrists, elbows, right shoulder, neck, spine, and heels, large toes and arches of both feet. He concluded that appellant was totally disabled. In a March 19, 1997 report, Dr. Ghiselli indicated that appellant's right knee felt as if it was moving outward laterally due to pes planovalgus deformity. He commented that the deformity could affect the alignment along the hip joint area causing low back pain and further turning of the right leg outward and laterally. He stated appellant had internal derangement of both knees and softening of the patella cartilage with bilateral chondromalacia.

Dr. Ghiselli provided extensive reports on appellant's right knee condition, diagnosing internal derangement and subluxation of the patella. He concluded that appellant was totally disabled and recommended an arthroscopy. However, he only gave a brief statement that appellant's current condition and disability was causally related to the February 5, 1988 employment injury. He did not provide a physiological explanation on how appellant's condition after her recurrence of disability was caused by the effects of the employment injury seven years previously or to the performance of her light-duty assignment. Appellant, therefore, has not met her burden of proof in establishing that the alleged recurrence of disability was causally related to her February 5, 1988 employment injury.

The decision of the Office of Workers' Compensation Programs, dated September 11, 1998, is hereby affirmed.

Dated, Washington, DC  
October 17, 2000

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

Valerie D. Evans-Harrell  
Alternate Member